

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET MOORE, claiming as widow of DONALD MOORE and
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,
Wheatridge, CO

*Docket No. 98-2553; Submitted on the Record;
Issued September 19, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the employee's death by suicide on September 16, 1996 was causally related to his accepted employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

Regarding the issue of whether the employee's death by suicide on September 16, 1996 was causally related to his accepted employment injury, the Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated April 13, 1998 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that the Office abused its discretion in denying appellant's request for reconsideration under section 8128.

Following the decision of the Office hearing representative, appellant, through her representative, requested reconsideration of her claim and submitted additional medical evidence. By decision dated August 17, 1998, the Office denied appellant's request on the grounds that the evidence submitted was cumulative and repetitious in nature and thus insufficient to warrant merit review of the prior decision.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the

Office.¹ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.²

In the instant case, the Office determined that appellant had not established that the employee's death was causally related to his accepted employment injury of neurotic depression in an obsessive-compulsive personality. The Office found that the medical evidence did not attribute the employee's death to compensable factors of employment. In support of her request for reconsideration, appellant, through her attorney, argued that the Office had incorrectly applied the "chain of causation" test in determining that the employee's suicide was not related to his accepted employment injury.³ Appellant's contention, however, is repetitive in nature as her attorney previously raised this argument before the hearing representative. Thus, it does not constitute legal argument sufficient to warrant a reopening of the case for merit review.

Appellant further submitted a medical report dated June 22, 1998 from the employee's attending physician, Dr. Gerd C. Leopoldt, a Board-certified psychiatrist. Dr. Leopoldt indicated that, he had reviewed the compensable factors of employment outlined in the decision of the Office hearing representative and found that these factors caused "a permanent depressive condition" in the employee. He opined that there were no intervening events, which "without the [m]ajor [d]epression caused by the above-mentioned work factors, could have caused the depression that resulted in the suicide." Dr. Leopoldt stated:

"It is a medical fact that depression can lead to suicide. 'How' the accepted job factors caused the suicide is through a chain of events. The job factors were the initial precipitants and direct causative factors. These factors set in motion the causal sequence leading to the suicide, namely, a mental derangement, which never cleared. The [d]epressive [d]isorder caused a serious mental disturbance, which impaired his normal rational judgment. Depression by its nature generates, feelings of despair. These feelings of despair ultimately lead to suicidal ideation, which in turn was impossible to fight off due to the depressi[ve] related despair. The suicide is thus traced directly to the accepted factors of employment...."

Dr. Leopoldt concluded that "[b]ut for the work[-]related depression, the death by suicide would not have occurred."

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence, which may be necessary to discharge her burden of proof.⁴

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

³ The chain of causation test provides that suicide under the majority rule is compensable if the injury produces mental derangement and the mental derangement produces suicide. A. Larson, *The Law of Workers' Compensation* § 36, Suicide or Intentional Self-Injury (1993). The Office has adopted the chain-of-causation test in determining whether an employee's suicide is compensable under the Federal Employees' Compensation Act; see *Carolyn King Palermo*, 45 ECAB 308 (1994).

⁴ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁵ If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.⁶

In this case, the record does not contain a prior report from Dr. Leopoldt in which he attributed the employee's suicide to compensable factors of employment. As this report was not previously of record and is relevant to the issue of whether the employee's suicide was causally related to his accepted employment injury of neurotic depression, it is sufficient to require the Office to conduct a merit review of the case. Therefore, the case shall be remanded to the Office to review the entire case record. After such further development as is deemed necessary, the Office shall issue a *de novo* decision on the merits of the case.

The decision of the Office of Workers' Compensation Programs dated August 17, 1998 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board. The decision of the Office dated April 13, 1998 is hereby affirmed.

Dated, Washington, DC
September 19, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁵ See 20 C.F.R. § 10.138(b).

⁶ *Dennis J. Lasanen*, 41 ECAB 933 (1990).